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2010 JUN 19 PM 2:53

CASE NO. NO. CRB 1702131

JUDGE McKENNEY

MOTION TO WITHDRAW PLEA

REQUEST FOR HEARING

REQUEST FOR APPOINTMENT OF SPECIAL PROSECUTOR

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to examine, treat, or offer her medical attention for her injuries, and fabricated an entire investigation.

It became clear, with this discovery The Barberton Law Department failed to release this exculpatory information as required under the auspices of *Brady v Maryland*. Therefore, Mrs. Mary Beth Foster was wrongfully subjected to a corrupt judicial process insofar as the State refused to release this exculpatory case information. Therefore, she suffered a manifest injustice.

Granted, the determination that a manifest injustice" has occurred refers to a Defendant's burden of establishing a "**manifest injustice**." *State v. Smith* (1977), 49 Ohio St.2d 261, 361 N.E.2d 1324, paragraph one of the syllabus; *State v. Milbrandt*, Champaign App. No.2007-CA-3, 2008 Ohio 761, at P8.

In this regard, a "**manifest injustice**" comprehends a fundamental flaw in the path of justice so extraordinary that the defendant could not have sought redress from the resulting prejudice through another form of application reasonably available to him or her." *State v. Hartzell* (Aug. 20, 1999), *Montgomery App. No. 17499*, 1999 Ohio App. LEXIS 3812. "Crim.R. 32.1 requires a defendant making a post-sentence motion to withdraw a plea to demonstrate **manifest injustice** because it is designed 'to discourage a defendant from pleading guilty to test the weight of potential reprisal, and later **withdraw the plea** if the sentence was unexpectedly severe.'" *State v. Boswell*, 121 Ohio St.3d 575, 2009 Ohio 1577, at P9, 906 N.E.2d 422, quoting *State v. Caraballo* (1985), 17 Ohio St.3d 66, 67, 17 Ohio B. 132, 477 N.E.2d 627.

Based on the above, Mrs. Mary Beth Foster has been forced to suffer a manifest injustice. This manifest injustice can only be righted with withdrawal of her plea, redaction of her sentence, provision of a new jury trial date, appointment of a special prosecutor, provision of all

discovery, and all other Constitutionally guaranteed rights appurtenant herein. Therefore, Mary Beth Foster requests her motion to withdraw her plea be granted, and that she receive all Constitutionally guaranteed rights appurtenant herein denied her in the first instance in this matter.

An evidentiary hearing is requested. In fairness to the State the Prosecutors will be asked under oath if they knew the Norton police failed to investigate this case. Therefore, the appointment of a special prosecutor is requested. This as both case prosecutors, at a minimum, will be called as witnesses in this case.

RESPECTFULLY SUBMITTED,

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CERTIFICATE OF SERVICE

A true and accurate copy of the Defendants Motion To Withdraw Plea was served upon the City of Barberton Law Department, Criminal Division, on June 19, 2018 via fx 330 861 7209, cc to Court, fax filed with Clerk of Courts (330) 848-6779.

/s/ Russell A. Buzzelli, Esq. (0038165)

THIS IS TO CERTIFY THAT THE ABOVE IS A TRUE AND CORRECT
COPY OF Motion to Withdraw Plea FILED IN

THE BARBERTON MUNICIPAL COURT OF BARBERTON, OHIO
ON June 19, 20 18.

CLERK OF THE BARBERTON MUNICIPAL COURT, BARBERTON, OHIO

Sharon Ste...
Clerk